

2:06CV156-WHA
FORM FOR USE IN APPLICATIONS
FOR HABEAS CORPUS UNDER 28 U.S.C. § 2254

RECEIVED

2006 FEB 22 A 10:00

DELANO SMITH

Name

#231612

Prison Number

WILLIAM E. DONALDSON PRISON ~ 100 WARRIOR
LANE ~ BESSEMER, ALABAMA 35203

Place of Confinement

United States District Court MIDDLE District of Alabama

Case No. _____
(To be supplied by Clerk of U. S. District Court)

DELANO SMITH, PETITIONER
(Full Name) (Include name under which you were convicted)

KENNETH JONES, RESPONDENT
(Name of Warden, Superintendent, Jailor, or authorized person
having custody of Petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF ALABAMA
_____, ADDITIONAL RESPONDENT.

(if petitioner is attacking a judgement which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN
STATE CUSTODY

INSTRUCTIONS--READ CAREFULLY

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.

The Judicial Conference of the United States has adopted, effective 1/1/83, the 8½ x 11 inch paper size standard for use throughout the federal judiciary and directed the elimination of the use of legal size paper. All pleadings, etc. filed after 12/31/82 must be on 8½ x 11 inch paper, otherwise we cannot accept them.

- (2) Additional pages are not permitted except with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies * must be mailed to the Clerk of the United States District Court whose address is:

P.O. Box 711
Montgomery, Alabama 36101

- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

***If you are proceeding in forma pauperis, only the original petition needs to be filed with the Court.**

PETITION

1. Name and location of court which entered the judgment of conviction under attack THE CIRCUIT COURT OF MONTGOMERY COUNTY
2. Date of judgment of conviction 10/18/03
3. Length of sentence LIFE W/O Sentencing Judge MR HORB

4. Nature of offense or offenses for which you were convicted: Capital Murder

5. What was your plea? (check one)

(a) Not guilty ()

(b) Guilty (✓)

(c) Nolo contendere ()

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details: _____

6. Kind of trial: (Check one)

(a) Jury (✓)

(b) Judge only ()

7. Did you testify at the trial? Yes () No (✓)

8. Did you appeal from the judgment of conviction? Yes (✓) No ()

9. If you did appeal, answer the following:

(a) Name of court _____

(b) Result N/A

(c) Date of result _____

If you filed a second appeal or filed a petition for certiorari in the Supreme Court, give details: _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal? Yes (✓) No ()

11. If your answer to 10 was "yes", give the following information:

(a) (1) Name of court THE CIRCUIT COURT OF MONTGOMERY COUNTY

(2) Nature of proceeding RULE 32 PETITION FOR POSTCONVICTION RELIEF

(3) Grounds raised Trial Counsel coerced him into pleading guilty; Ineffective Assistance of Trial Counsel; Ineffective Assistance of Appellate Counsel; Illegal Arrest; and His Failure To Timely Appeal Was Through No Fault of His Own.

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No (✓)

(5) Result _____

(6) Date of result N/A

(b) As to any second petition, application or motion give the same information:

(1) Name of court N/A

(2) Nature of proceeding N/A

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No () N/A

(5) Result N/A

(6) Date of result N/A

(c) As to any third petition, application or motion, give the same information:

(1) Name of Court N/A

(2) Nature of proceeding N/A

(3) Grounds raised _____

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes () No () N/A

(5) Result N/A

(6) Date of result N/A

(d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion:

(1) First petition, etc. Yes (✓) No ()

(2) Second petition, etc. Yes () No () N/A

(3) Third petition, etc. Yes () No () N/A

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: N/A

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. As to all grounds on which you have previously exhausted state court remedies, you should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- ✓(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- ✓(d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, [where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim].
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- ✓(i) Denial of effective assistance of counsel.
- ✓(j) Denial of right of appeal.

A. Ground one: COERCED CONFESSION

Supporting FACTS (tell your story briefly without citing cases or law):
THE PETITIONER was not a suspect in that crime. The newspaper reports stated that there were only three suspects whose names were Willie Gardner, Taurus Hall, and Anthony Fuller. And they had taken those suspects into custody already. When one of them, Willie Gardner, gave a false story implicating me as a suspect. But he had lied using my name to get himself a deal to escape the death penalty. My trial counsel convinced me that I should plead guilty to escape the death penalty too. Even though I had told him that I did not participate in this crime. And even though I had expressed to him on numerous occasions that I had wanted to go to trial.

B. Ground two: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Supporting FACTS (tell your story briefly without citing cases or law):
My trial counsel subjected me to a conflict of interest when he charged my family \$4,700.00 when he was a court appointed counsel. By being paid by both the State and my family he committed fraud. He never investigated my alibi defense, plus he never believed me when I told him I was innocent. He went beyond the scope of a competent counsel when he convinced my parents that I would be convicted and sentenced to death because the evidence against me was overwhelming. But the evidence was not that overwhelming. I did not participate and the evidence only showed three participants who were already in custody before I was arrested.

C. Ground three: INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL AND DENIAL OF THE RIGHT TO DIRECT APPEAL.

Supporting FACTS (tell your story briefly without citing cases or law):
My appellate counsel, who was my trial counsel, was ineffective for withdrawing from my direct appeal. He did not file an Anders brief. And he sabotaged my right to receive a direct appeal by failing to give the trial court notice of my intent to appeal. And since the trial court did not notify me that I could challenge my counsel's withdrawal by showing meritorious issues were present in my case I lost my right to the appeal.

D. Ground four: ILLEGAL ARREST.

Supporting FACTS (tell your story briefly without citing cases or law):
There was never any showing of probable cause to a magistrate judge as to why I should've been arrested. While Gardner was never shown to be a reliable informant in the past. And there was no tangible evidence presented to the magistrate to support the issuance of an arrest warrant.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal state briefly what grounds were not so presented, and give your reasons for not presenting them: N/A

14. Do you have any petition or appeal now pending in any court, wither state or federal, as to the judgment under attack? Yes () No (☒)

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Joe M. Reed, Montgomery, Alabama

(b) At arraignment and plea Same

(c) At trial Same

(d) At sentencing Same

(e) On appeal Same

(f) In any post-conviction proceeding N/A

(g) On appeal from any adverse ruling in a post-conviction proceeding: N/A

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes () No (☒)

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes () No (☒)

(a) If so, give name and location of court which imposed sentence to be served in the future: N/A

(b) And give date and length of sentence to be served in the future: N/A

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes () No () N/A

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

X (Pro Se)
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on 2/15/06
(date)

X Delano Smith 2/16/06
Signature of Petitioner

STATE OF ALABAMA
DEPARTMENT OF CORRECTIONS
W.E. DONALDSON CORR. FACILITY

RECEIVED

2006 FEB 22 A 10: 01

AS OF: 02/09/2006

AIS #: 231612

NAME: SMITH, DELANO

DEBRA P. HADLEY, CLK
U.S. DISTRICT COURT
MONTHLY DEPOSITS

MONTH	# OF DAYS	AVG DAILY BALANCE	MONTHLY DEPOSITS
FEB	19	\$6.16	\$25.00
MAR	31	\$10.39	\$105.00
APR	30	\$3.07	\$30.00
MAY	31	\$5.31	\$125.00
JUN	30	\$8.67	\$75.00
JUL	31	\$5.05	\$80.00
AUG	31	\$9.60	\$90.00
SEP	30	\$16.53	\$90.00
OCT	31	\$0.51	\$0.00
NOV	30	\$0.51	\$0.00
DEC	31	\$0.51	\$0.00
JAN	31	\$0.51	\$0.00
FEB	9	\$0.51	\$0.00

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